

## § 70.243

## 27 CFR Ch. I (4–1–98 Edition)

Center in accordance with the terms of the levy.

(26 U.S.C. 6334)

### § 70.243 Exempt amount.

Amount payable to the taxpayer as wages, salary, or other income for each payroll period described in § 70.244 of this part are exempt from levy as follows:

(a) If the payroll period is weekly, an amount equal to:

(1) The sum of:

(i) The standard deduction, and

(ii) The aggregate amount of the deductions for personal exemption allowed the taxpayer under 26 U.S.C. 151 in the taxable year in which such levy occurs, divided by

(2) 52.

(b) If the payroll period is not weekly, the amount exempt from levy shall be an amount which as nearly as possible will result in the same total exemption from levy for such individual over a period of time as such individual would have under paragraph (a) of this section if (during such period of time) the individual were paid or received such wages, salary or other income on a regular weekly basis.

(26 U.S.C. 6334)

### § 70.244 Payroll period.

For purpose of determining the amount of wages, salary or other income exempt from levy under 26 U.S.C. 6334(a)(9):

(a) *Regularly used calendar periods.* In the case of wages, salary or other income paid to the taxpayer on the basis of an established calendar period regularly used by the employer or other person levied upon for payroll or payment purpose (e.g., daily, weekly, bi-weekly, semimonthly, or monthly), that period is the taxpayer's payroll period.

(b) *Amounts paid on recurrent but irregular basis.* In the case of wages, salary, or other income paid to the taxpayer on a recurrent but irregular basis, the first day of the taxpayer's payroll period is that day following the day upon which the wages, salary, or other income were last paid to the taxpayer. The last day of the payroll period is that day upon which the current

payment becomes payable to him or her. However, in any case in which:

(1) Amounts are paid to the taxpayer on a recurrent but irregular basis, and

(2) the last payment was paid to the taxpayer more than 60 days before the current payment becomes payable, the current payment will be deemed a one-time payment (*see* paragraph (c) of this section).

(c) *Nonrecurrent payments.* In the case of wages, salary or other income paid to the taxpayer on a one-time basis, the taxpayer's payroll period is deemed to be weekly (*i.e.*, the 1-week period ending on the day of payment).

(26 U.S.C. 6334)

### § 70.245 Computation of exempt amount and payment of amounts not exempt from levy to the Chief, Tax Processing Center.

(a) *General.* Unless advised by the Chief, Tax Processing Center that no part of the money due to the taxpayer is exempt from levy, the employer or other person levied upon will compute the exempt amount, using the formula in § 70.243 of this part and the taxpayer's statement of exemptions and filing status described in paragraph (b) of this section.

(b) *Statement of exemptions and filing status.* Unless the taxpayer submits a statement of exemptions and filing status to the employer or other person levied upon, the exempt amount will be applied as if the taxpayer were a married individual filing a separate return with only 1 personal exemption. A statement of exemptions and filing status shall be made by either:

(1) Completion of the form provided for this purpose by the Bureau, or

(2) A written statement that:

(i) Gives the taxpayer's filing status for income tax purposes,

(ii) Shows any additional standard deduction if the taxpayer or the taxpayer's spouse is at least 65 and/or blind,

(iii) Identified by name and by relationship to the taxpayer each person for whom a dependent exemption is claimed,

(iv) Is signed by the taxpayer, and

(v) Contains a declaration that it is made under the penalties of perjury.

(c) *Time for submission of statement.* The taxpayer must submit the statement of exemptions and filing status to the employer or other person levied upon no later than the later of:

(1) The third day before the last day of the payroll period for which the exemption is claimed (that is, the third day before payday), or

(2) If the Chief, Tax Processing Center delivers the forms for the statement of exemption and filing status to the employer or other person levied upon (see § 70.242(c)(2) of this part), the second day after the date the taxpayer receives the form.

For purposes of paragraphs (c) (1) and (2) of this section, the term “day” does not include Saturdays, Sunday or a legal holiday within the meaning of 26 U.S.C. 7503. Failure on the part of the taxpayer to submit a timely statement of exemptions and filing status will result in the computation of the exempt amount as if the taxpayer were a married individual filing a separate return with only 1 personal exemption for the applicable pay period, except that the employer or other person levied upon may accept a statement of exemptions and filing status not timely submitted in accordance with this paragraph, and may prepare a disbursement to the taxpayer based upon the information properly verified therein, if payment to the Chief, Tax Processing Center in accordance with the levy is not thereby delayed.

(d) *Payment of amounts not exempt from levy to the Chief, Tax Processing Center—*(1) *In General.* Wages, Salary, or other income the subject of a levy are payable to the Chief, Tax Processing Center on the date the payor is otherwise obligated to pay the taxpayer (see § 70.242(c) of this part).

(2) *Delayed payment in certain cases.* If, however, as described in paragraph (c)(2) of this section, the taxpayer may submit a statement of exemptions and filing status after the third day before payday, amounts payable to the taxpayer on that payday, to the extent not exempt from levy, are payable to the Chief, Tax Processing Center on the third day following the date on which the taxpayer may timely submit the statement of exemptions and filing status under paragraph (c)(2) of this sec-

tion. For purposes of this rule, the term “day” does not include Saturday, Sunday or a legal holiday within the meaning of 26 U.S.C. 7503.

(26 U.S.C. 6334)

*Periods of Limitation in Judicial Proceedings*

**§ 70.251 Periods of limitation on suits by taxpayers.**

(a) No suit or proceeding under section 7422(a) of the Internal Revenue Code for the recovery of any internal revenue tax, penalty, or other sum shall be begun until whichever of the following first occurs:

(1) The expiration of 6 months from the date of the filing of the claim for credit or refund, or

(2) A decision is rendered on such claim prior to the expiration of 6 months after the filing thereof. Except as provided in paragraph (b) of this section, no suit or proceeding for the recovery of any tax, penalty, or other sum imposed under the provision of 26 U.S.C. enforced and administered by the Bureau may be brought after the expiration of 2 years from the date of mailing, by either registered or certified mail, by a regional director (compliance) or the Chief, Tax Processing Center, to a taxpayer of a statutory notice of disallowance of the part of the claim to which the suit or proceeding relates.

(b) The 2-year period described in paragraph (a) of this section may be extended if an agreement to extend the running of the period of limitations is executed. The agreement must be signed by the taxpayer or by an attorney, agent, trustee, or other fiduciary on behalf of the taxpayer. If the agreement is signed by a person other than the taxpayer, it shall be accompanied by an authenticated copy of the power of attorney or other legal evidence of the authority of such person to act on behalf of the taxpayer. If the taxpayer is a corporation, the agreement should be signed with the corporate name followed by the signature of a duly authorized officer of the corporation. The agreement will not be effective until signed by a regional director (compliance) or the Chief, Tax Processing Center.